

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS P.O. Box 1450 Alexandria, Viginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,530	10/23/2001	David H. Coy	00537-00900K	3999
75	590 05/05/2003			
	Brian R. Morrill, Esq.		EXAMINER	
Biomeasure, Inc. 27 Maple Street	t		TELLER,	ROY R
Milford, MA (01757		ART UNIT	PAPER NUMBER
			1654 DATE MAILED: 05/05/2003	10

Please find below and/or attached an Office communication concerning this application or proceeding.

is) 1-8 is/are pending in the algorithe above claim(s) is/are allowed. is) is/are allowed. is) is/are rejected. is) is/are objected to. is) are subject to restrict the secification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed to oved, corrected drawings are received to the corrected drawings are received. In or declaration is objected to objected to oved, corrected drawings are received. In or declaration is objected to oved, corrected drawings are received. In or declaration is objected to oved, corrected drawings are received. In or declaration is objected to oved, corrected drawings are received. In or declaration is objected to overline the priority of the opinion of the priority of the corrected copies of the priority of the corrected detailed Office action of the foreign language and the opinion of the opinion	re withdrawn from or extion and/or election examiner. a) accepted or b) ection to the drawing of on is: a) to this or by the Examiner. for foreign priority to documents have be documents have be of the priority document or a list of the certor domestic priority or guage provisional approach or domestic priority	requirement. objected to by the system of t	ance. See 37 CFR 1.85(a). isapproved by the Examir 3 119(a)-(d) or (f). pplication No received in this National received. § 119(e) (to a provisional pen received.	ner. Stage al application).
is/a is/are allowed. is) is/are allowed. is) is/are rejected. is) is/are objected to. is) are subject to restrict the secification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed to oved, corrected drawings are red to or declaration is objected to be used to subject the or declaration is objected to subject the or declaration is objected to subject the or declaration is objected to subject the or declaration is made of a claim object the copies of the priority of copies of the certified copies of the priority of application from the International declaration of the foreign land the translation of the foreign land the subject that any object the certified copies of the cert	re withdrawn from or extion and/or election examiner. a) accepted or b) ection to the drawing of on is: a) quired in reply to this or by the Examiner. for foreign priority to documents have be documents have be of the priority document or a list of the certor domestic priority or guage provisional acceptance or domestic priority or documents have been or domestic priority or documents acceptance or document	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a). isapproved by the Examir 3 119(a)-(d) or (f). pplication No received in this National received. § 119(e) (to a provisional pen received.	ner. I Stage
is/a is/are allowed. is) is/are allowed. is) is/are rejected. is) is/are objected to. is) are subject to restrict the secification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed to oved, corrected drawings are red to or declaration is objected to be used to subject the or declaration is objected to subject the or declaration is objected to subject the or declaration is objected to subject the or declaration is made of a claim object the copies of the priority of copies of the certified copies of the priority of application from the International declaration of the foreign land the translation of the foreign land the subject that any object the certified copies of the cert	re withdrawn from or extion and/or election examiner. a) accepted or b) ection to the drawing of on is: a) quired in reply to this or by the Examiner. for foreign priority to documents have be documents have be of the priority document or a list of the certor domestic priority or guage provisional acceptance or domestic priority or documents have been or domestic priority or documents acceptance or document	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a). isapproved by the Examir 3 119(a)-(d) or (f). pplication No received in this National received. § 119(e) (to a provisional pen received.	ner. I Stage
the above claim(s) is/a s) is/are allowed. s) is/are rejected. s) is/are objected to. s) are subject to restrict orers ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are received, corrected drawings are received to the corrected drawings are received to be used to	re withdrawn from or election and/or election e Examiner. a) accepted or b) ection to the drawing of on is: a) to this or by the Examiner. for foreign priority to documents have be documents have be of the priority document on all sureau (PC on for a list of the cereor domestic priority to the priority of the cereor domestic priority to the priority of the cereor domestic priority to the priority of the cereor domestic priority to the cereor domestic priority of the cereor domestic priority documents the cereor documents the cereo	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a). isapproved by the Examir \$119(a)-(d) or (f). pplication No received in this National received. § 119(e) (to a provisional)	ner. I Stage
is/a is/are allowed. is) is/are allowed. is) is/are rejected. is) is/are objected to. is) are subject to restrict the secification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed to oved, corrected drawings are red to or declaration is objected to oved. Is used to be u	re withdrawn from or election and/or election election and/or election election to the drawing (d on is: a) quired in reply to this (a by the Examiner. for foreign priority and documents have be documents have be of the priority documents at list of the certain for a list of the certain and the companion of the certain and the certain an	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a). isapproved by the Examir \$119(a)-(d) or (f). pplication No received in this National received.	ner. I Stage
the above claim(s) is/a s) is/are allowed. s) is/are rejected. s) is/are objected to. s) are subject to restrict ores. ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are red to or declaration is objected to or declaration is objected to so U.S.C. §§ 119 and 120 wiedgment is made of a claim of Some * c) _ None of: Certified copies of the priority of Certified copies of the priority of the priority of the priority of the copies of the priority of the certified copies of the certified copies of the certified copies of the certified certified copies of the certified certified copies of the certified c	re withdrawn from or election and/or election e Examiner. a) accepted or b) ection to the drawing (d on is: a) quired in reply to this (a) by the Examiner. for foreign priority to documents have be documents have be	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a). isapproved by the Examir \$\frac{1}{2} \text{119(a)-(d) or (f).}	ner.
the above claim(s) is/a s) is/are allowed. s) is/are rejected. s) is/are objected to. s) are subject to restrict the secification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are received in or declaration is objected to so used. 5 U.S.C. §§ 119 and 120 wiedgment is made of a claim of the corrected copies of the priority of the corrected copies of the	re withdrawn from or election and/or election e Examiner. a) accepted or b) ection to the drawing (d on is: a) quired in reply to this or by the Examiner. for foreign priority undocuments have be	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a). isapproved by the Examir	
the above claim(s) is/a s) is/are allowed. s) is/are rejected. s) is/are objected to. s) are subject to restrict the secification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are recently or declaration is objected to so or declaration is objected to so or declaration is objected to so of the second of the coverage of the second of the second or declaration is objected to so of the second of the	re withdrawn from continuous etion and/or election e Examiner. a) accepted or b) ection to the drawing (ad on is: a) quired in reply to this (aby the Examiner.	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a).	
the above claim(s) is/a s) is/are allowed. s) is/are rejected. s) is/are objected to. s) are subject to restricters ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are recently or declaration is objected to the order of the order o	re withdrawn from or election and/or election e Examiner. a) accepted or b) ection to the drawing (d on is: a) quired in reply to this or by the Examiner.	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a).	
the above claim(s) is/a s) is/are allowed. s) is/are rejected. s) is/are objected to. s) are subject to restricters ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are red or declaration is objected to 5 U.S.C. §§ 119 and 120	re withdrawn from or election and/or election e Examiner. a) accepted or b) ection to the drawing (d on is: a) quired in reply to this or by the Examiner.	requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a).	
the above claim(s) is/a s) is/are allowed. s) 1-8 is/are rejected. s) is/are objected to. s) is/are objected to restricters ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are received or declaration is objected to	re withdrawn from continuous ction and/or election e Examiner. a) accepted or b) ection to the drawing (d on is: a) accepted in reply to this continuous conti	requirement. ☐ objected to by the solution of the held in abeya approved b) ☐ di	ance. See 37 CFR 1.85(a).	
the above claim(s) is/a s) is/are allowed. s) 1-8 is/are rejected. s) is/are objected to. s) are subject to restricters ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed oved, corrected drawings are recoved.	re withdrawn from continuous ction and/or election e Examiner. a) accepted or b) ection to the drawing (d on is: a) accepted in reply to this continuous conti	requirement. ☐ objected to by the solution of the held in abeya approved b) ☐ di	ance. See 37 CFR 1.85(a).	
the above claim(s) is/a s) is/are allowed. s) <u>1-8</u> is/are rejected. s) is/are objected to. s) are subject to restricters ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected drawing correction filed	re withdrawn from one cition and/or election Examiner. a) accepted or b) cection to the drawing (d on is: a)	requirement. ☐ objected to by the solution of the held in abeya approved b) ☐ di	ance. See 37 CFR 1.85(a).	
the above claim(s) is/a s) is/are allowed. s) is/are rejected. s) is/are objected to. s) are subject to restricters ecification is objected to by the wing(s) filed on is/are: ant may not request that any objected.	re withdrawn from of the cition and/or election election and/or election and accepted or b) [ection to the drawing (requirement. objected to by the solution of t	ance. See 37 CFR 1.85(a).	
the above claim(s) is/a s) is/are allowed. s) <u>1-8</u> is/are rejected. s) is/are objected to. s) are subject to restricters ecification is objected to by the wing(s) filed on is/are:	re withdrawn from continuous con	requirement. ☐ objected to by th		
the above claim(s) is/a s) is/are allowed. s) <u>1-8</u> is/are rejected. s) is/are objected to. s) are subject to restricters ecification is objected to by the	re withdrawn from o	requirement.	ne Examiner	
the above claim(s) is/a s) is/are allowed. s) <u>1-8</u> is/are rejected. s) is/are objected to. s) are subject to restricters	re withdrawn from o			
the above claim(s) is/a s) is/are allowed. s) <u>1-8</u> is/are rejected. s) is/are objected to. s) are subject to restrice.	re withdrawn from o			
the above claim(s) is/a s) is/are allowed. s) <u>1-8</u> is/are rejected. s) is/are objected to.	re withdrawn from o			
the above claim(s) is/a s) is/are allowed. s) <u>1-8</u> is/are rejected.	• •	onsideration.		
the above claim(s) is/as) is/are allowed.	• •	onsideration.		
the above claim(s) is/a	• •	onsideration.		
· - · ·	• •			
-> 4 Distans manding to the	1. 1.			
Claims	·			
d in accordance with the pract	n for allowance exce tice under <i>Ex parte</i>	ept for formal mat <i>Quayle</i> , 1935 C.[ιτers, prosecution as to t D. 11, 453 O.G. 213.	ne merits is
	,		Wana maaaa 19	la a '' .
	lad an 00 A 00	200		
ime may be available under the provisions ONTHS from the mailing date of this comn reply specified above is less than thirty (3 reply is specified above, the maximum st within the set or extended period for reply	of 37 CFR 1.136(a). In no nunication. 30) days, a reply within the s atutory period will apply and will, by statute, cause the a	tatutory minimum of thirt will expire SIX (6) MON	ty (30) days will be considered time THS from the mailing date of this	ely. communication.
		TO EXPIRE 3 M	ONTH(S) FROM	
MAILING DATE of this commun Y	ication appears on t	he cover sheet wi	ith the correspondence a	ddress
	1 7		1654	
Office Action Summary		er	Art Unit	T
	10/004	530	COY ET AL.	
	MAILING DATE of this community IED STATUTORY PERIOD F G DATE OF THIS COMMUN me may be available under the provisions DNTHS from the mailing date of this common reply specified above is less than thirty (3 reply is specified above, the maximum straight in the set or extended period for reply yed by the Office later than three months are madjustment. See 37 CFR 1.704(b). DONSIVE to communication(s) finaction is FINAL. this application is in condition	Examin Roy Te MAILING DATE of this communication appears on to MAILING DATE of this communication appears on to MED STATUTORY PERIOD FOR REPLY IS SET G DATE OF THIS COMMUNICATION. me may be available under the provisions of 37 CFR 1.136(a). In no- DNTHS from the mailing date of this communication. reply specified above is less than thirty (30) days, a reply within the si reply is specified above, the maximum statutory period will apply and within the set or extended period for reply will, by statute, cause the a wed by the Office later than three months after the mailing date of this erm adjustment. See 37 CFR 1.704(b). Consider to communication(s) filed on O9 August 20 action is FINAL. 2b) This action this application is in condition for allowance excellence.	Roy Teller MAILING DATE of this communication appears on the cover sheet with the second process of the communication. The second process of the second process of the cover sheet with the second process of the cover sheet with the second process of the cover sheet of the	Examiner Roy Teller MAILING DATE of this communication appears on the cover sheet with the correspondence as a specified above. BED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM G DATE OF THIS COMMUNICATION. me may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed controlled above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered time reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Need by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any arm adjustment. See 37 CFR 1.704(b). This action is non-final. This application is in condition for allowance except for formal matters, prosecution as to the second state of this communication.

Application/Control Number: 10/004,530

Art Unit: 1654

DETAILED ACTION

This office action is in response to Paper No: 7, received 8/9/02, in which applicant amended claim 4.

Claims 1-8 will be examined.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-8 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-8 of prior U.S. Patent No. 6,307,017. This is a double patenting rejection.

Conclusion

All claims are rejected.

Application/Control Number: 10/004,530

Art Unit: 1654

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is (703) 305-4243. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

RT 1654 5/1/03

BRENDA BRUMBACK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600